



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 15, 1994

Mr. Rex McIntire
City Attorney
P.O. Box 820609
North Richland Hills, Texas 76182-0609

OR94-367

Dear Mr. McIntire:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 25846.

The City of North Richland Hills (the "city") received two requests for information concerning an internal personnel investigation of harassment in the city's water and sewer department.¹ You contend that the information may be excepted under section 552.103(a), which provides an exception for information relating to civil or criminal litigation to which the city may be a party. You also contend that the information is confidential under sections 552.101 and 552.102 of the Open Records Act.

The city has the burden of providing relevant facts to show that the section 552.103(a) exception is applicable in a particular situation. To meet this burden, the city must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212

¹We note that since one of the requestors is another Texas city, the information could be transferred to the requesting city and the transfer would not be a public disclosure. Information can be transferred between cities without violating the confidentiality of the information or waiving exceptions to disclosure under the Open Records Act. Attorney General Opinions H-917 (1976) at 1; H-242 (1974) at 4 (information not required to be disclosed to the public can be transferred between state agencies without destroying confidential nature of information). *But see* Attorney General Opinion JM-590 (1986) (governmental body may not transfer confidential information to another governmental body when prohibited from doing so by statute).

(Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The city must meet both prongs of this test for information to be excepted under section 552.103(a). You state that the information "relates throughout to allegations of a criminal nature and relates to criminal litigation to which employees of this City may be a party." However, you have not stated what criminal activity is being investigated. The documents provided to this office do not show that the city is conducting a criminal investigation or that criminal charges may be brought. Since the city has not provided information about the possibility of criminal litigation, the city has not met its burden of showing that section 552.103(a) is applicable in this situation. The information at issue may not be withheld under section 552.103(a).

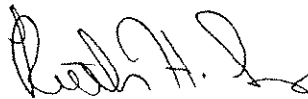
You also urge that the information at issue is excepted from disclosure under sections 552.101 or 552.102 to protect the privacy interests of city employees or former employees. The test to determine if information is private and excepted from disclosure is whether the information is (1) highly intimate or embarrassing to a reasonable person and (2) of no legitimate public concern. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.) Although information relating to the internal investigation of harassment involving public employees may be highly intimate or embarrassing, the public generally has a legitimate interest in knowing the details of such an investigation. Open Records Decision No. 444 (1986). Generally, information about allegations of harassment would not be excepted.

However, the information at issue includes allegations of sexual harassment. In *Morales v. Ellen*, 840 S.W.2d 519, 525 (Tex. App.--El Paso 1992, writ denied), the court held that the names of witnesses and details in an investigatory file regarding allegations of sexual harassment were exactly the type of information specifically excluded from disclosure under the privacy doctrine set forth in *Industrial Foundation*. The court ordered the release of the affidavit of the person being investigated for sexual harassment and the conclusions of the board of inquiry, concluding that the public's interest was sufficiently served by the disclosure of these documents. *Id.* Although the court indicated the person accused of sexual harassment might have privacy interests, it indicated that there was a legitimate public interest in knowing the details behind the person's resignation.

You have submitted for review a statement from an employee; a list of witnesses to the alleged harassment; and an investigative report with handwritten notes. In accordance with the holding in *Ellen*, the information that tends to identify the complainant and witnesses to the sexual harassment is protected by common-law privacy. We have marked the names of witnesses that must be withheld. We also have marked the type of information in the statement and in the investigative report and notes which must be withheld. However, the information identifying the employee accused of sexual harassment is not excepted, as we think that there is a legitimate public interest in this information which outweighs the privacy interests of the accused employee.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', with a stylized flourish at the end.

Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/MAR/mc

Ref.: ID# 25846

Enclosures: Marked documents

cc: Mr. Mark G. Daniel
115 West Second Street
Suite 202
Fort Worth, Texas 76102
(w/o enclosures)